

ORDINANCE NO. 2003-3389

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING MIAMI BEACH CITY CODE CHAPTER 2, ARTICLE VII BY CREATING DIVISION 5 THEREOF ENTITLED "CAMPAIGN FINANCE REFORM", AND FURTHER AMENDING CITY CODE SECTION 38-6 ENTITLED "PROHIBITED CAMPAIGN CONTRIBUTIONS BY VENDORS" AND CITY CODE CHAPTER 2 BY TRANSFERRING SAID SECTION FROM CHAPTER 38 OF THE CODE TO CITY CODE CHAPTER 2, ARTICLE VII, DIVISION 5, RENUMBERING CODE SECTION 38-6 TO CODE SECTION 2-487; AMENDING SAME BY MANDATING THAT THE CITY PUBLISH NOTICE REQUIREMENTS OF THIS ORDINANCE, ESTABLISHING RESPONSIBILITY OF CANDIDATES FOR ELECTED OFFICE TO DETERMINE STATUS OF POTENTIAL DONOR AS VENDOR, CLARIFYING AND CREATING DEFINITIONS, CREATING ADDITIONAL WAIVER PROVISION WHEN TERMINATION OF EXISTING CONTRACT WOULD BE ECONOMICALLY ADVERSE TO CITY'S BEST INTERESTS; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION AND AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA:

SECTION 1. That Miami Beach City Code Chapter 2, Article VII, is hereby amended by the creation of Division 5 thereof entitled "Campaign Finance Reform" and is further amended by transferring Section 38-6 entitled "Prohibited Campaign contributions by Vendors" from City Code Chapter 38 to City Code Chapter 2, Article VII, Division 5 and renumbering said Section 38-6 to Section 2-487, to read as follows:

DIVISION 5. CAMPAIGN FINANCE REFORM

* * *

Sec. ~~38-6~~ 2-487. Prohibited Campaign Contributions by Vendors

~~(a)~~ A. General.

- (1) (a) No ~~person who is a vendor to the city~~ shall give a campaign contribution directly, ~~or through a member of the person's immediate family, or through a political action committee, or through any other person,~~ indirectly to a candidate, or to the campaign committee of a candidate, for the offices of mayor or commissioner. Commencing on the effective date of this ordinance, all proposed city contracts, as

well as requests for proposals (RFP), requests for qualifications (RFQ), requests for letters of interest (RFLI), or bids issued by the City, shall incorporate this Ordinance so as to notify potential vendors of the proscription embodied herein.

(b) No candidate, or campaign committee of a candidate for the offices of mayor or commissioner, shall ~~solicit or receive~~ deposit into such candidate's campaign account any campaign contribution directly or indirectly from a ~~person who is a vendor to the city, or through a member of the person's immediate family, or through a political action committee, or through any other person on behalf of the person.~~ This prohibition applies to natural persons and to persons who hold a controlling financial interest in business entities. Candidates (or those acting on their behalf) shall ensure compliance with this code section by confirming with the Procurement Division's City records (including City of Miami Beach website) to verify the vendor status of any potential donor.

- (2) A fine of up to \$500.00 shall be imposed on every person who violates this ~~prohibition~~ section. Each act of ~~solicitation~~, giving or ~~receiving~~ depositing a contribution in violation of this ~~paragraph~~ section shall constitute a separate violation. All contributions received deposited by a candidate in violation of this ~~paragraph~~ section shall be forfeited to the city's general revenue fund.
- (3) A person or entity who directly or ~~through a member of the person's immediate family, or through a political action committee, or through any other person~~ indirectly makes a contribution to a candidate who is elected to the office of mayor or commissioner shall be disqualified for a period of 12 months following the swearing in of the subject elected official from ~~transacting business~~ serving as a vendor with the city. ~~This prohibition on transacting business with the city may be waived only in the manner provided hereinbelow in subsection (b).~~
- (4) As used in this section:
 - (a)
 1. A "vendor" is a person and/or entity who ~~transacts business with the city, or has been approved by the city commission to transact business with the city, or is listed on the city manager's approved vendor list.~~ selected by the City as the successful bidder on a present or pending bid for goods, equipment or services, or has been approved by the City on a present or pending award for goods, equipment or services, prior to or upon execution of a contract, purchase order or standing order.
 2. "Vendor" shall include natural persons and/or entities who hold a controlling financial interest in a vendor entity. The term "controlling financial interest" shall mean the ownership, directly or indirectly, of 10% or more of the outstanding capital stock in any corporation or a direct or indirect interest of 10% or more in a firm. The term "firm" shall mean a corporation, partnership, business trust or any legal entity other than a natural person.

3. For purposes of this ordinance, "vendor" status shall terminate upon completion of the agreement for the provision of goods, equipment or services.

(b) For purposes of this section, the term "services" shall mean the rendering by a vendor through competitive bidding or otherwise, of labor, professional and/or consulting services to the City of Miami Beach.

(b) A ~~"contribution"~~ is:

1. ~~A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value.~~
2. ~~A transfer of funds between political committees, between committees of continuous existence, or between a political committee and a committee of continuous existence.~~
3. ~~The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.~~
4. ~~The transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, and the term includes any interest earned on such account or certificate.~~

(c) The term contribution shall have the meaning ascribed to such term in Chapter 106, Florida Statutes, as amended and supplemented (copies available in City Clerks office).

~~(b)~~ B. Conditions for waiver of prohibition. The requirements of this section may be waived by a 5/7th vote for a particular transaction by city commission vote after public hearing upon finding that:

~~(1)~~ An open to all sealed competitive bid or proposal has been submitted and the city official/donee has in no way participated in the determination of the bid specifications or bid award;

~~(2)~~(1) The property goods, equipment or services to be involved in the proposed transaction are unique and the city cannot avail itself of such property goods, equipment or

services without entering into a transaction which would violate this section but for waiver of its requirements; or

- ~~(3)~~(2) The business entity involved in the proposed transaction is the sole source of supply ~~within the city~~ as determined by the City's Procurement Director in accordance with procedures established in section 2-367(c) of the Miami Beach City Code; or
- ~~(4)~~(3) An emergency contract (as authorized by the City Manager pursuant to section 2-396 of the Miami Beach City Code) must be made in order to protect the health, safety or welfare of the citizens of the city, as determined by a five-sevenths vote of the city commission; or
- (4) A contract for the provision of goods, equipment or services exists which, if terminated by the City, would be adverse to the best economic interests of the City.

Any grant of waiver by the city commission must be supported with a full disclosure of the subject campaign contribution.

~~(e)~~C. Applicability. This section shall be applicable only to prospective transactions, and the city commission may in no case ratify a transaction entered into in violation of this section.

SECTION 2. REPEALER

All ordinances or parts of ordinances in conflict herewith be and the same are hereby repealed.

SECTION 3. SEVERABILITY

If any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made a part of the Code of the City of Miami Beach, Florida. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section", "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE

This Ordinance shall take effect the 18th day of January, 2003.

PASSED and **ADOPTED** this 8th day of January, 2003.

ATTEST:

Muriel Parker
CITY CLERK

[Signature]
MAYOR

(Requested by Commissioner Jose Smith, and approved by Community Affairs Committee)

(Passed on 1st Reading on December 11, 2002)

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**APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION**

[Signature] 12-26-02
City Attorney Date